

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Proposed Uniform APOX Security Agreement Form

FROM:

Policy and Plans Group
4E-70, Hdqs.

EXTENSION

NO.

DATE

FILE Security 18
27 February 1980

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

Also Security 14

1.

AC/PPG

*27 Feb**29 Feb**PPG*

2.

ADD/P&M

*29 FEB 1980**2/29**PPG*

3.

ADD/SEC

*29 FEB 1980**2/29**W*

4.

AD/SEC

*4 MAR 80**K*

5.

*4 MAR 1980**12 min**80*

6.

The attached memorandum was prepared before the pre-SECOM meeting which occurred at 1630 hours 26 February. During the meeting, it was learned for the first time that OGC (i.e., [redacted]) had been involved in producing the wording of the proposed agreement. It is noted, as stated in the attached memorandum, that OGC [redacted] is currently reviewing the agreement. (Presumably, this is the second time around for OGC.) While this OGC development negates the recommended Agency position for the 27 February 1980 SECOM meeting, the remainder of the memorandum remains valid and is being forwarded for your information.

1-3 and 4: I was astounded to hear that OGC prepared the attached proposal. The suggested grammatical correction is about as effective as a Band-Aid after Hiroshima.

Agree with [redacted] in DDs & I. The draft needs a lot of work & a lot more polish.

STAT

Approved For Release 2004/05/12 : CIA-RDP85T00788R000100100028-3

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DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SEC011-D-186

16 April 1980

MEMORANDUM FOR: Members, DCI Security Committee

FROM:

Executive Secretary

SUBJECT: APEX Nondisclosure Agreement

STAT

1. The Special Assistant to the DCI for Compartmentation has requested the Security Committee to devise and recommend to him an appropriate Nondisclosure Agreement to cover Sensitive Compartmented Information protected within the APEX Special Access Control System. He has repeated his request recently with a note of some urgency since he would like to have a nondisclosure agreement for the 5 - 6 May 1980 APEX Seminar.

2. Recent Security Committee efforts to devise a common nondisclosure agreement did not result in endorsement of the version produced by the Compartmentation Subcommittee. That version was provided the DCI General Counsel for legal consultation around the Community. They have not achieved a unanimous acceptance and the Department of Justice member recently reported that there were legal questions about the current draft.

3. To demonstrate Security Committee support of the APEX proposal and in satisfaction of the urgent request of the Special Assistant to the DCI for Compartmentation, it is proposed that members endorse and recommend to the SA/DCI/Compartmentation adoption of the Nondisclosure Agreement for Sensitive Compartmented Information, previously approved by the DCI's General Counsel, and now widely employed by departments and agencies as Form 4066 (Revised). Copy attached. Such actions will permit

05-0-0150/13

3. It was noted that several components voiced the opinion that the wording of the draft seemed amateurish, simplistic and written at an elementary school level. In considering these comments, it should be borne in mind that this Agreement will be utilized for persons with widely diverse educational backgrounds, and, as long as the Agreement is legally binding, then the more easily understood the better.

4. Should the above recommended Agency position be rejected and the proposed line in-line out revision be undertaken at the 27 February 1980 SECOM meeting, the following comments, received during coordination, are set forth for your guidance and consideration:

a. An objection was voiced regarding the last sentence of paragraph 1. In the past, individual Secrecy Agreements were executed each time persons were briefed on individual programs and these oaths were subsequently used for recording and accountability purposes. However, under paragraph 1 of the proposed draft, a single, blanket agreement would be executed and this has raised a concern that accountability would be diminished should subsequent access be granted for additional APEX compartments/subcompartments.

b. Recommendations regarding paragraph 5:

(1) A minor grammatical change to be effected by deleting the word "about" at the end of sentence 1 and inserting it ("about") before the word "which" in line 2 of paragraph 5.

(2) In support of the NSA objection #1 (as set forth in the attachment entitled "Major Objections to Straw Man Non-Disclosure Agreement,") it was suggested that the government review (pre-publication and pre-speaking engagement) as set forth in paragraph 5 not be restricted to SCI material only but be expanded to cover any classified information obtained by virtue of an individual's employment or access covered by the Non-Disclosure Agreement.

c. Recommendations regarding paragraph 6:

(1) Sentence 2 was considered too arbitrary and the following rewording is suggested to link behavioral standards to the APEX Manual: "I also understand that if I do anything or behave in a manner contrary to the APEX Manual, thereby showing that I might not be willing or able to protect this Sensitive Compartmented Information, the government may take away my access to it and require me to return any of the information which I then have."

(2) For clarity, the following additional sentence is suggested as sentence 3 in paragraph 6: "I agree to surrender all such material upon demand to an appropriate official of the government."

(3) A concern was raised regarding the last sentence of paragraph 6 which allows the removal of access, under certain conditions, without "giving notice or holding a hearing." The suggestion was voiced that "the reasons for the action should be provided the individual at the time the access is withdrawn." No alternate language was offered by the concerned component. It is noted that the issue of appeals to SCI denials was at one time being reviewed by SECOM. However, the issue was never concluded and has been in a suspended status for the past 6-9 months.

d. Regarding the signature section on page 4, it has been suggested that a line be added requesting the individual's date of birth. This request was made by the Security Records Division since the Office of Security record indices (SANCA) utilizes date of birth as the primary means of identification as opposed to Social Security Number.



STAT

NONDISCLOSURE AGREEMENT

APEX SPECIAL ACCESS CONTROL SYSTEM

1. I, _____, by signing this agreement, acknowledge
(Print full name)
that I have been told about and given access to certain classified information and intelligence sources and methods which were explained to me to be protected within the APEX Special Access Control System. At other places in this agreement, this information is called "this Sensitive Compartmented Information." This agreement applies to any additional information or programs, falling within the APEX Special Access Control System, to which I may later be granted access.

2. I have been told that if this Sensitive Compartmented Information becomes known to people who are not permitted by the United States Government to have it, this could cause serious harm to the United States of America.

3. I have been told how to handle and store this Sensitive Compartmented Information and how to find out which people I can show it to or talk to about it.

4. In return for being given access to this Sensitive Compartmented Information, I agree that I will never reveal this information, in any way, to any person who is not permitted by the United States Government to have it.

5. I also agree to submit for review by the United States Government any information concerning intelligence subjects or activities ^{ABOUT} which I want to publish or speak. ~~about~~. I agree to let the government review this information before I talk about it or show it to anyone who is not permitted to have this Sensitive Compartmented Information. I will not publish or speak about the information until I get written permission from the government to do so. I understand that the reason for the government's review of this information is to be sure that it does not contain any of this Sensitive Compartmented Information.

6. I understand that if I reveal this Sensitive Compartmented Information to anyone who is not permitted to have it, I may no longer be permitted to have access to the information myself and I may be required to return any of the information which I have. I also understand that ^{MANNER CONTRARY TO THE APEX MANUAL, THEREBY SHOWING} if I do anything or behave in a ~~way which shows~~ that I might not be willing or able to protect this Sensitive Compartmented Information, the government may take away my access to it and require me to return any ^{I AGREE TO SURRENDER ALL SUCH MATERIAL} of the information which I then have. ^{UPON DEMAND TO AN APPROPRIATE OFFICIAL OF THE GOVERNMENT.} The government may take away my access at any time it judges such action to be in the best interest of national security and may do this without giving me notice or holding a hearing.

7. Also, I understand that if I reveal this Sensitive Compartmented Information to people who are not permitted to have it, this might violate the civil or criminal laws of the United States. I understand that a violation of civil law might cause me to have to pay the cost of any damage which resulted from my action. I understand that a violation of criminal law could result in my being fined or imprisoned or perhaps both.

8. If I reveal this Sensitive Compartmented Information without the permission of the United States Government, I assign to the United States Government any money or other thing of value which I receive or have already received for doing so, or any right to receive such money or thing of value.
9. I agree that this Sensitive Compartmented Information is now and will always be the property of the United States Government. I agree that I will return all of this information which I have or for which I am responsible when I am asked for it by an authorized representative of the United States Government. If I do not return it when I am asked, this too may be a violation of United States criminal law for which I can be punished.
10. Nothing said in this agreement means that the United States Government will give up any right it has to prosecute me if I violate the laws of the United States. Also, nothing said in this agreement means that I give up any basis for defending myself if the United States Government tries to prosecute me for violating the laws of the United States.
11. Each of the numbered paragraphs in this agreement stands by itself. If a court decides that any of these paragraphs do not apply to me, the rest of the paragraphs will still apply.
12. I have read this agreement and I understand it. I have asked any questions which I have about this agreement, the laws which apply to

violation of it, and the rules and regulations which govern the handling and storage of this Sensitive Compartmented Information, and my questions have been answered in a way I understand.

13. I am making this agreement in good faith, and I intend to live up to it.

SIGNATURE

ORGANIZATION

DATE

SOCIAL SECURITY ACCOUNT NUMBER

DATE OF BIRTH

I witnessed the signature which appears above. I accept this agreement on behalf of the United States Government as a prior condition of this individual being permitted access to and use of the designated Sensitive Compartmented Information.

SIGNATURE

PRINTED NAME

ORGANIZATION

DATE

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Major Objectives to Strawman Nondisclosure Agreement

1. A secrecy agreement devoted solely to APEX ignores other designated intelligence categories, and does not address information which may be unclassified but is otherwise protected from disclosure by statute (e.g., 50 USC Section 403(d)(3) or Public Law 86-36). The agreement should explicitly be extended to include all matters of a sensitive or protected nature garnered by virtue of the employment which the agreement concerns.
2. The agreement, as written, appears to be legally insufficient in respect of the requisite contractual element "consideration." In order to be legally binding, a contract must have sufficient consideration. In order to be thus sufficient, there must be a legal detriment or benefit that has been bargained for and exchanged for a promise. "Access" does not appear to be adequate consideration. For employees, it is employment which serves as the basis of the bargain. For the prospective employee it is the position, not the access, which is sought. Since access appears insufficient to establish the requisite bargain element of "consideration," the agreement would not be binding.